

# NUNAVUT LABOUR STANDARDS BOARD

## MEMORANDUM OF DECISION

IN THE MATTER OF an Investigation and Hearing by the Board pursuant to section 53(2) of the *Labour Standards Act* in relation to Certificate No. 2018-01 made by the Labour Standards Officer in response to a complaint filed by Raymond St-Gelais against Niqitaq Fisheries Ltd.

Written hearing held on August 8, 2019

Board Members Present:

Arthur Yuan, Chairperson  
Ookalik Curley  
Sara Siebert  
Natsiq Kango

### Introduction

[1] Raymond St-Gelais (the Complainant) filed a complaint with the Labour Standards Officer on March 30, 2018 stating that he had worked 12 hours per day for seven days between October 14 and 21, 2017 for Niqitaq Fisheries Ltd. at the rate of \$45 per hour and had not been paid. The Officer conducted an investigation and issued a wage certificate in accordance with section 53(1)(c) of the *Labour Standards Act* in the total amount of \$4,960.80, broken down as follows:

40 hours at \$45.00 = \$1,800  
44 hours at \$67.50 = \$2,970  
4% vacation pay = \$190.80

[2] The wage certificate was sent to the Employer in accordance with section 53(1)(d) of the *Labour Standards Act* and forwarded to the Board pursuant to section 53(2). The Employer made no response to the certificate.

[3] Section 53(2) of the Act authorizes the Board, after completing any investigation that it considers adequate including the holding of any hearing it considers advisable, to confirm the certificate, to cancel the certificate and make a new one, or to cancel the certificate and take no further action.

[4] The Board received a number of documents from the Labour Standards Compliance Officer in support of the wage certificate. These documents comprised the record before the Board and included the following:

1. Complaint
2. Certificate No. 2018-01
3. Labour Standards Compliance Officer (LSCO) letter dated August 31, 2018

4. LSCO Decision
5. Record of Employment
6. June 29, 2018 letter from LSCO to Baffin Fisheries
7. Response letter from Baffin Fisheries (undated)
8. July 18, 2018 letter from LSCO to Baffin Fisheries
9. emails between LSCO and Baffin Fisheries
10. emails from Senior Project Officer at Baffin Fisheries
11. corporate information re Baffin Fisheries received from the Department of Justice

[5] The Board issued a Notice of Hearing indicating that a hearing would be held on August 8, 2019 by written submissions only and inviting the parties to provide any additional evidence and submissions to the Board.

[6] Niqitaq Fisheries provided the Board with an affidavit from its Chief Executive Officer, Chris Flanagan, sworn July 10, 2019, stating that a search of corporate records was conducted and no documentation of any employment arrangement with the Complainant was found. The Complainant provided no additional information, although he contacted the office of the Board's legal counsel and confirmed that he had received the Notice of Hearing.

## **Decision**

[6] Certificate 2018-01 is cancelled and a new certificate is issued in the amount of \$3,780.00 against Niqitaq Fisheries Ltd., and against Methusalah Kunuk, Jacopie Maniapik, and Leo Mucktar, being the Directors of Niqitaq Fisheries Ltd. at the material time, for wages for 84 hours worked by the Complainant between October 14 and 20, 2017, both dates inclusive, at the rate of \$45/hour.

## **Evidence**

[7] Niqitaq Fisheries Ltd. is a division of Baffin Fisheries, a federally incorporated non-profit corporation. Niqitaq had engaged Symphony Construction, a general contractor, to build a plant in Pond Inlet. The Complainant was employed by Symphony until October 11, 2017. The relationship between Symphony and Niqitaq ended at that time for reasons not provided to the Board and not relevant to this case. Allun Phillips, an on-site supervisor for Nigitaq, asked the Complainant and other workers to stay on to complete the work. The Complainant continued to work 12 hours per day from October 14 to October 21, 2017 when he returned to Quebec.

[8] The email exchanges between Scott Elvidge, Senior Project Manager for Baffin, Leo Muktar (or Maktar) a member of the Board of Directors, and Chris Flanagan, Chief Financial Officer and Interim Chief Executive Officer, at the relevant time, confirms that a verbal offer of employment was made. In his email to Mr. Elvidge on October 31, 2017, Leo Maktar says that he asked if the Symphony crew would stay on and finish the work. The text from Allun Phillips that Elvidge quoted in his reply to Mr. Maktar states, "The work team will be happy to finish the

job and get paid by niqitaq direct”. The Complainant, and perhaps others, continued to do the work as requested.

### **Analysis**

[9] The Board acknowledges that there is no written documentation of the Complainant’s employment with Niqitaq. Niqitaq’s only argument is the lack of written documentation, but written documentation is not essential to establish that an employment agreement was entered into. In all of the circumstances of the case, the Board is satisfied and finds that the Complainant was asked by persons in apparent authority with Niqitaq to continue to work and be paid directly by Niqitaq and he agreed to do so. The fact that he did actually continue to work reinforces that conclusion. The Board also finds that the terms of the verbal agreement were that the Complainant would continue to do the work on the same basis as he was employed by Symphony, that is, at the rate of \$45/hour.

[10] However, the Board is of the view that, because the Complainant made no claim for overtime or vacation pay and because the Board has no evidence about either of those features of his employment, the rate of \$45/hour should be the rate of pay applied to all hours worked.

[11] There is a discrepancy in the evidence provided to the Board in that the complaint itself claims 84 hours of work based on 12 hours per day for a period of seven days but the time sheets provided by the Complainant document 12 hours per day for a period of eight days. The time sheets indicate that the time claimed on the last day of the period, October 21, 2017, was the day on which the Complainant travelled back to Quebec. The Board has no information in relation to any agreement relating to travel time and, in addition, the actual complaint form claims payment for 84 hours.

[12] For all of the above reasons, the Board finds that the Complainant is entitled to be paid for 84 hours at the rate of \$45/ hours, for a total amount owing to him by Niqitaq Fisheries Ltd. of \$3,780.

Dated at Iqaluit, Nunavut this 26<sup>th</sup> day of August 2019.



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Arthur Yuan, Chairperson  
Nunavut Labour Standards Board